

1 S.134

2 Introduced by Committee on Judiciary

3 Date: March 21, 2017

4 Subject: Crimes and criminal procedure; court diversion; pretrial services

5 Statement of purpose of bill as introduced: This bill proposes to expand the
6 scope and purpose of adult court diversion; to allow a court to refer a person to
7 diversion; to strengthen the confidentiality provisions in the diversion program
8 and in pretrial services; to focus risk assessments on persons who are unable to
9 post bail; to allow any person charged with an eligible offense the opportunity
10 to engage in pretrial services; to offer pretrial coordinators to support a person
11 in meeting conditions of release imposed by the court, including the condition
12 to appear for judicial proceedings, and connect the person with community-
13 based treatment programs, rehabilitative services, recovery supports, and
14 restorative justice programs; and to establish the General Assembly's intent to
15 encourage participation in pretrial services by persons cited or arrested for
16 misdemeanor drug possession and require the Attorney General and Defender
17 General to work collaboratively to develop a proposal to implement such
18 intent.

19 An act relating to court diversion and pretrial services

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 3 V.S.A. § 164 is amended to read:

3 § 164. ADULT COURT DIVERSION PROJECT PROGRAM

4 (a) The Attorney General shall develop and administer an adult court
5 diversion ~~project~~ program in all counties. The ~~project~~ program shall be
6 operated through the juvenile diversion project ~~and shall be designed to assist~~
7 ~~adults who have been charged with a first or second misdemeanor or a first~~
8 ~~nonviolent felony~~. The Attorney General shall adopt only such rules as are
9 necessary to establish an adult court diversion ~~project~~ program for adults, in
10 compliance with this section.

11 (b) The program shall be designed for two purposes:

12 (1) To assist adults who have been charged with a first or a second
13 misdemeanor or a first nonviolent felony.

14 (2) To assist adults with substance abuse or mental health treatment
15 needs regardless of the person's prior criminal history record. Programming
16 for these persons is intended to support access to appropriate treatment or other
17 resources with the aim of improving the person's health and reducing future
18 adverse involvement in the justice system. A person charged with a felony
19 offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible
20 under this section.

21 (c) ~~The adult court diversion project administered by the Attorney General~~

1 program shall encourage the development of diversion ~~projects~~ programs in
2 local communities through grants of financial assistance to municipalities,
3 private groups or other local organizations. The Attorney General may require
4 local financial contributions as a condition of receipt of ~~project~~ program
5 grants.

6 (d) The Office of the Attorney General shall develop program outcomes
7 following the designated State of Vermont performance accountability
8 framework and, in consultation with the Department of State's Attorneys and
9 Sheriffs, the Office of the Defender General, and the Judiciary, report annually
10 on or before December 1 to the General Assembly on services provided and
11 outcome indicators.

12 (e) All adult court diversion ~~projects~~ programs receiving financial
13 assistance from the Attorney General shall adhere to the following provisions:

14 (1) The diversion ~~project~~ program shall accept only persons against
15 whom charges have been filed and the court has found probable cause, but are
16 not yet adjudicated. The prosecuting attorney may refer a person to diversion
17 either before or after arraignment and shall notify in writing the diversion
18 program and the court of his or her intention to refer the person to diversion.
19 The court may also refer a person to diversion at or after arraignment and shall
20 notify in writing the diversion program of its intention to refer the person to
21 diversion. If the prosecuting attorney or the court refers a case to diversion,

1 the prosecuting attorney may release information to the victim upon a showing
2 of legitimate need and subject to an appropriate protective agreement defining
3 the purpose for which the information is being released and in all other
4 respects maintaining the confidentiality of the information; otherwise files held
5 by the court, the prosecuting attorney, and the law enforcement agency related
6 to the charges shall be confidential and shall remain confidential unless:

7 (A) the Board declines to accept the case;

8 (B) the person declines to participate in diversion;

9 (C) the Board accepts the case, but the person does not successfully
10 complete diversion;

11 (D) the prosecuting attorney recalls the referral to diversion.

12 (2) Alleged offenders shall be informed of their right to the advice and
13 assistance of private counsel or the public defender at all stages of the
14 diversion process, including the initial decision to participate, and the decision
15 to accept the adult diversion contract, so that the candidate may give informed
16 consent.

17 (3) The participant shall be informed that his or her selection of the
18 adult diversion contract is voluntary.

19 (4) Each State's Attorney, in cooperation with the Office of the Attorney
20 General and the adult court diversion project program, shall develop clear
21 criteria for deciding what types of offenses and offenders will be eligible for

1 diversion; however, the State's Attorney shall retain final discretion over the
2 referral of each case for diversion.

3 (5) All information gathered in the course of the adult diversion process
4 shall be held strictly confidential and shall not be released without the
5 participant's prior consent (except that research and reports that do not require
6 or establish the identity of individual participants are allowed).

7 (6) Information related to the present offense that is divulged during the
8 adult diversion program shall not be used ~~in the prosecutor's case~~ against the
9 person in the person's criminal case for any purpose, including impeachment
10 or cross-examination. However, the fact of participation and success, or
11 reasons for failure may become part of the prosecutor's records.

12 (7)(A) The adult court diversion ~~project~~ program shall maintain
13 sufficient records so that the reasons for success or failure of the program in
14 particular cases and overall can be investigated by program staff. These
15 records shall include a centralized statewide filing system that will include the
16 following information about individuals who have successfully completed an
17 adult court diversion program:

- 18 (i) name and date of birth;
19 (ii) offense charged and date of offense;
20 (iii) place of residence;
21 (iv) county where diversion process took place; and

1 (v) date of completion of diversion process.

2 (B) These records shall not be available to anyone other than the
3 participant and his or her attorney, State's Attorneys, the Attorney General and
4 directors of adult court diversion projects.

5 (8) Adult court diversion ~~projects~~ programs shall be set up to respect the
6 rights of participants.

7 (9) Each participant shall pay a fee to the local adult court diversion
8 project. The amount of the fee shall be determined by project officers or
9 employees based upon the financial capabilities of the participant. The fee
10 shall not exceed \$300.00. The fee shall be a debt due from the participant, and
11 payment of such shall be required for successful completion of the program.
12 Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall
13 be retained and used solely for the purpose of the court diversion program.

14 ~~(d)~~(f) The Attorney General is authorized to accept grants and gifts for the
15 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

16 ~~(e)~~(g) Within 30 days of the two-year anniversary of a successful
17 completion of adult diversion, the court shall provide notice to all parties of
18 record of the court's intention to order the sealing of all court files and records,
19 law enforcement records other than entries in the adult court diversion
20 project's centralized filing system, fingerprints, and photographs applicable to
21 the proceeding. The court shall give the State's Attorney an opportunity for a

1 hearing to contest the sealing of the records. The court shall seal the records if
2 it finds:

3 (1) two years have elapsed since the successful completion of the adult
4 diversion program by the participant and the dismissal of the case by the
5 State's Attorney; and

6 (2) the participant has not been convicted of a subsequent felony or
7 misdemeanor during the two-year period, and no proceedings are pending
8 seeking such conviction; and

9 (3) rehabilitation of the participant has been attained to the satisfaction
10 of the court.

11 ~~(f)~~(h) Upon the entry of an order sealing such files and records under this
12 section, the proceedings in the matter under this section shall be considered
13 never to have occurred, all index references thereto shall be deleted, and the
14 participant, the court, and law enforcement officers and departments shall
15 reply to any request for information that no record exists with respect to such
16 participant inquiry in any matter. Copies of the order shall be sent to each
17 agency or official named therein.

18 ~~(g)~~(i) Inspection of the files and records included in the order may
19 thereafter be permitted by the court only upon petition by the participant who
20 is the subject of such records, and only to those persons named therein.

21 ~~(h)~~(j) The process of automatically sealing records as provided in this

1 section shall only apply to those persons who completed diversion on or after
2 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
3 apply to the court to have his or her records sealed. Sealing shall occur if the
4 requirements of subsection ~~(e)~~(g) of this section are met.

5 ~~(i)~~(k) Subject to the approval of the Attorney General, the Vermont
6 Association of Court Diversion Programs may develop and administer
7 programs to assist persons under this section charged with delinquent,
8 criminal, and civil offenses.

9 Sec. 2. 13 V.S.A. § 7554c is amended to read:

10 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

11 (a)(1) The objective of a pretrial risk assessment is to provide information
12 to the ~~Court~~ court for the purpose of determining whether a person presents a
13 risk of nonappearance or a threat to public safety so the ~~Court~~ court can make
14 an appropriate order concerning bail and conditions of pretrial release.

15 (2) The objective of a pretrial needs screening is to obtain a preliminary
16 indication of whether a person has a substantial substance abuse or mental
17 health issue that would warrant a subsequent court order for a more detailed
18 clinical assessment.

19 (3) Participation in a risk assessment or needs screening pursuant to this
20 section does not create any entitlement for the assessed or screened person.

21 (b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a person

1 whose offense or status falls into any of the following categories shall be
2 offered a risk assessment and, if deemed appropriate by the pretrial monitor, a
3 needs screening prior to arraignment:

4 (A) ~~misdemeanors and felonies, excluding listed crimes and drug~~
5 ~~trafficking, cited into court; and~~

6 (B) ~~persons who are arrested and lodged and unable to post bail~~
7 ~~within 24 hours of lodging, excluding persons who are charged with an offense~~
8 ~~for which registration as a sex offender is required upon conviction pursuant to~~
9 ~~subchapter 3 of chapter 167 of this title or an offense punishable by up to life~~
10 ~~imprisonment who is arrested, lodged, and unable to post bail within 24 hours~~
11 ~~of lodging shall be offered a risk assessment and, if deemed appropriate by the~~
12 ~~pretrial services coordinator, a needs screening prior to arraignment.~~

13 (2) ~~As used in this section, “listed crime” shall have the same meaning~~
14 ~~as provided in section 5301 of this title and “drug trafficking” means offenses~~
15 ~~listed as such in Title 18 A person charged with an offense for which~~
16 ~~registration as a sex offender is required pursuant to subchapter 3 of chapter~~
17 ~~167 of this title or an offense punishable by a term of life imprisonment shall~~
18 ~~not be eligible under this section.~~

19 (3) ~~Unless ordered as a condition of release under section 7554 of this~~
20 ~~title, participation Participation in risk assessment or needs screening shall be~~
21 ~~voluntary and a person’s refusal to participate shall not result in any criminal~~

1 legal liability to the person.

2 (4) In the event an assessment or screening cannot be obtained prior to
3 arraignment, the risk assessment and needs screening shall be conducted as
4 soon as practicable.

5 (5) A person who qualifies pursuant to ~~subdivisions (1)(A)-(D)~~
6 subdivision (1) of this subsection and who has an additional pending charge or
7 a violation of probation shall not be excluded from being offered a risk
8 assessment or needs screening unless the other charge is a listed crime.

9 ~~(6)(A) The Administrative Judge and Court Administrator, in~~
10 ~~consultation with the Secretary of Human Services and the Commissioner of~~
11 ~~Corrections, shall develop a statewide plan for the phased, consistent rollout of~~
12 ~~the categories identified in subdivisions (1)(A) through (D) of this subsection,~~
13 ~~in the order in which they appear in this subsection. The Administrative Judge~~
14 ~~and Court Administrator shall present the plan to the Joint Legislative~~
15 ~~Corrections Oversight Committee on or before October 15, 2014~~ Any person
16 charged with a criminal offense, except those persons identified in subdivision
17 (b)(2) of this section, may choose to engage with a pretrial services
18 coordinator.

19 ~~(B) All persons whose offense or status falls into one of the~~
20 ~~categories shall be eligible for a risk assessment or needs screening on or after~~
21 ~~October 15, 2015. Prior to that date, a person shall not be guaranteed the offer~~

1 of a risk assessment or needs screening solely because the person's offense or
2 status falls into one of the categories. Criminal justice professionals charged
3 with implementation shall adhere to the plan.

4 (c) The results of the risk assessment and needs screening shall be provided
5 to the person and his or her attorney, the prosecutor, and the ~~Court~~ court.
6 Pretrial services coordinators may share information only within the
7 limitations of subsection (e) of this section.

8 (d)(1) At arraignment, ~~in consideration of the risk assessment and needs~~
9 ~~screening~~, the ~~Court~~ court may order the a person to ~~comply with~~ do the
10 following conditions:

11 (A) meet with a pretrial ~~monitor~~ services coordinator on a schedule
12 set by the ~~Court~~ court; and

13 (B) participate in a needs screening with a pretrial services
14 coordinator; and

15 (C) participate in a clinical assessment by a substance abuse or
16 mental health treatment provider and follow the recommendations of the
17 provider.

18 (2) The ~~Court~~ court may order the person to ~~follow the recommendation~~
19 ~~of the pretrial monitor if the person has completed a risk assessment or needs~~
20 ~~screening~~ engage in pretrial services. Pretrial services may include the pretrial
21 services coordinator:

1 (A) supporting the person in meeting conditions of release imposed
2 by the court, including the condition to appear for judicial proceedings; and

3 (B) connecting the person with community-based treatment
4 programs, rehabilitative services, recovery supports, and restorative justice
5 programs.

6 (3) If possible, the ~~Court~~ court shall set the date and time for the clinical
7 assessment at arraignment. In the alternative, the pretrial ~~monitor~~ services
8 coordinator shall coordinate the date, time, and location of the clinical
9 assessment and advise the ~~Court~~ court, the person and his or her attorney, and
10 the prosecutor.

11 (4) ~~The conditions~~ An order authorized in subdivision (1) or (2) of this
12 subsection shall be in addition to any ~~other~~ conditions of release permitted by
13 law and shall not limit the ~~Court~~ court in any way. Failure to comply with a
14 court order authorized by subdivision (1) or (2) of this subsection shall not
15 constitute a violation of section 7559 of this title.

16 (e)(1) Information obtained from the person during the risk assessment or
17 needs screening shall be exempt from public inspection and copying under the
18 Public Records Act and, except as provided in subdivision (2) of this
19 subsection, only may be used for determining bail, conditions of release, and
20 appropriate programming for the person in the pending case. The information
21 a pretrial services coordinator may report is limited to whether a risk

1 assessment indicates risk of nonappearance, whether further substance use
2 assessment or treatment is indicated, whether mental health assessment or
3 treatment is indicated, whether a person participated in a clinical assessment,
4 and whether further engagement with pretrial services is recommended unless
5 the person provides written permission to release additional information.
6 Information related to the present offense directly or indirectly derived from
7 the risk assessment, needs screening, or other conversation with the pretrial
8 services coordinator shall not be used against the person in the person's
9 criminal or juvenile case for any purpose, including impeachment or cross-
10 examination. However, the fact of participation or nonparticipation in risk
11 assessment or needs screening may be used in subsequent proceedings. The
12 immunity provisions of this subsection apply only to the use and derivative use
13 of information gained as a proximate result of the risk assessment or, needs
14 screening, or other conversation with the pretrial services coordinator.

15 (2) The person shall retain all of his or her due process rights
16 throughout the risk assessment and needs screening process and may release
17 his or her records at his or her discretion.

18 ~~(3) The Vermont Supreme Court in accordance with judicial rulemaking~~
19 ~~as provided in 12 V.S.A. § 1 shall promulgate and the Department of~~
20 ~~Corrections in accordance with the Vermont Administrative Procedure Act~~
21 ~~pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody,~~

1 ~~control, and preservation of information consistent with the confidentiality~~
2 ~~requirements of this section. Emergency rules adopted prior to January 1, 2015~~
3 ~~pursuant to this section shall be considered to meet the “imminent peril”~~
4 ~~standard under 3 V.S.A. § 844(a) All records of information obtained during~~
5 ~~risk assessment or needs screening shall be stored in a manner making them~~
6 ~~accessible only to the Director of Pretrial Services and Pretrial Service~~
7 ~~Coordinators for a period of three years, after which the records shall be~~
8 ~~maintained as required by sections 117 and 218 of this title and any other State~~
9 ~~law. The Director of Pretrial Services shall be responsible for the destruction~~
10 ~~of records when ordered by the court.~~

11 (f) The Attorney General’s Office shall:

12 (1) contract for or otherwise provide the pretrial services described in
13 this section, including performance of risk assessments, needs screenings, and
14 pretrial monitoring services, and

15 (2) develop pretrial services outcomes following the designated State of
16 Vermont performance accountability framework and, in consultation with the
17 Department of State’s Attorneys and Sheriffs, the Office of the Defender
18 General, and the Judiciary, report annually on or before December 1 to the
19 General Assembly on services provided and outcome indicators.

20 Sec. 3. MISDEMEANOR POSSESSION OF DRUGS; PRETRIAL

21 SERVICES

1 (a) It is the intent of the General Assembly to encourage persons cited or
2 arrested for a misdemeanor drug possession charge the opportunity to engage
3 with pretrial services, and, if appropriate, enter treatment, and that, in turn, a
4 person who complies with such conditions will be eligible for dismissal of the
5 charge.

6 (b) The Attorney General, the Defender General, and the Executive
7 Director of the Department of State's Attorneys and Sheriffs shall work
8 collaboratively to develop a specific legislative proposal to accomplish this
9 intent with an implementation date of July 1, 2018 and report to the Senate and
10 House Committees on Judiciary and on Appropriations, the Senate Committee
11 on Health and Welfare, and the House Committee on Human Services on or
12 before November 1, 2017.

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on July 1, 2017.